

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 26 April 2023

To: Shropshire Council

**Of: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND**

1. Shropshire Council (The "**Council**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.
2. The Information Commissioner (the "**Commissioner**") hereby issues the Council with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to the Council's
 - a. Continuing non-compliance with section 1(1) FOIA;
 - b. Continuing breach of section 10(1) FOIA.
3. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that the Council is required to take are set out in **Annex 1**

Legal Framework for this Notice

4. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

"(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

5. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

6. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain limited circumstances. The code of practice issued under section 45 of the FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days¹. In all cases, the public authority must give the requester a written response within the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

standard time limit for compliance advising of reliance on the permitted extension.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

"If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements."

Background

8. The Commissioner became aware of the Council's poor FOI compliance performance when his representative made contact with it in late 2022. The Council provided the Commissioner with initial statistics which raised concerns about its timeliness rate for responding to requests.
9. In subsequent correspondence the Council experienced some difficulty in providing the Commissioner with accurate statistics regarding the number of requests which remained outstanding. The Council confirmed that this was due to a weakness in its system, with individual service areas being responsible for recording and collating their own FOI requests.
10. The Council confirmed that, prior to Christmas 2022, it had completed the Self-Assessment FOI Toolkit and that this was used as the basis for developing a Draft Recovery Plan. It also confirmed its intention to appoint a new post of Head of Policy and Governance with

responsibility for overseeing the FOI processes and addressing the Commissioner's concerns going forward. The Commissioner has since been contacted by the newly appointed post holder. The Council confirmed that it had directed service areas to ensure that outstanding requests were cleared by the end of March 2023.

11. At the time of writing the Council still has a backlog of 143 overdue requests. The oldest unanswered request dates back to April 2021, with remaining requests dating from January 2022 and every subsequent month to the present day.

The Contravention and Reasons for this Notice

12. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.
13. Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to severe delay, and the need for significant and sustained improvement in timely FOI responses, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to Shropshire Council. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOI request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension of a maximum of a further 20 working days has not been applied. It is essential that the improvements that the Council has already achieved since the initial contact with the ICO are sustained.
14. The Commissioner also considers it a proportionate regulatory step to require the Council to finalise and publish an action plan which formalises measures to mitigate delays in responding to the requests it

receives, in line with statutory requirements. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in responding to FOI requests, with mitigations for any recurring problems addressed specifically in the plan. The Commissioner has produced a range of resources², including a template Action Plan, which should support the Council in complying with this step.

Terms of this Notice

15. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring the Council to take specified steps to comply with the requirements of Part 1 of FOIA. The specified steps are set out in **Annex 1** of this Notice.

16. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/resources-toolkits-and-training/>

Right of Appeal

17. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

18. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 9368963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.



Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES SHROPSHIRE COUNCIL TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

THIS NOTICE FURTHER REQUIRES SHROPSHIRE COUNCIL TO TAKE THE FOLLOWING STEP BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) Devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests as required by this notice.